

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LARRY GOLDEN,

Plaintiff, *pro se*,

v.

THE UNITED STATES,

Defendant.

No. 23-811 C

Senior Judge Eric G. Bruggink

**MOTION OF DEFENDANT, THE UNITED STATES, TO STAY BRIEFING ON
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT [DKT. 9]**

Defendant the United States (the Government) respectfully requests that the Court stay briefing on Plaintiff Larry Golden’s “Motion for Summary Judgement [sic]” (Dkt. 9) pending the Court’s resolution of the Government’s concurrently-filed Motion to Dismiss (Dkt. 10). As explained in the Government’s Motion to Dismiss, Mr. Golden’s claims in the present lawsuit are duplicative of those previously litigated in his prior infringement suit against the Government, Case No. 13-307 (“*Golden P*”), and are thus barred by claim preclusion and the *Kessler* doctrine. Further, the allegations in Mr. Golden’s complaint fail to plausibly plead any coherent theory of how the Government allegedly infringes all the elements of any of his asserted patent claims.

Accordingly, the Government has requested that the Court dismiss Plaintiff’s complaint under Rule 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC) with prejudice and without leave to amend. Dkt. 10. And if the Court grants this relief, Plaintiff’s motion for summary judgment will be moot and further briefing will be unnecessary. *See Golden v. United States*, 156 Fed. Cl. 623, 632 (2021) (denying Mr. Golden’s motion for summary judgment after granting the Government’s motion to dismiss). As this Court has

previously noted, the “court will routinely stay consideration of a motion for summary judgment when a motion to dismiss the case is pending.” *Mohn v. United States*, 2021 WL 4130757, at *1 (Fed. Cl. Sept. 10, 2021) (citing *Boaz Hous. Auth. v. United States*, 994 F.3d 1359, 1363 (Fed. Cir. 2021); *Stephan v. United States*, 117 Fed. Cl. 68, 70 (2014); *Arunachalam v. United States*, 2020 WL 5412752, at *3 (Fed. Cl. Sept. 9, 2020)).

The Government further submits that Mr. Golden’s motion for summary judgment—filed shortly after service of his latest complaint and before the Government had even responded to that complaint—should be denied as premature, as the Court repeatedly explained to Mr. Golden after he filed several similar premature summary judgment motions in *Golden I*. See, e.g., *Golden v. United States*, 129 Fed. Cl. 630, 634 (2016) (noting that this Court denied Mr. Golden’s motion for summary judgment “because the Government had not [yet] filed an Answer”); 137 Fed. Cl. 155, 187 (2018) (denying Mr. Golden’s “Motion for Leave to File a Motion for Summary Judgment” as premature because “the Government ‘has not had an opportunity to make full discovery’” (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986))).

Counsel for the Government contacted Plaintiff Larry Golden to request his position on the Government’s present motion to stay briefing on Mr. Golden’s motion for summary judgment, pending resolution of the Government’s motion to dismiss. The Government understands that Mr. Golden opposes the Government’s request for briefing on his summary judgment motion to be stayed.

CONCLUSION

For the aforementioned reasons, the Government respectfully requests that the Court order that briefing on Mr. Golden’s “Motion for Summary Judgement [sic]” (Dkt. 9) be stayed, pending the Court’s resolution of the Government’s Motion to Dismiss (Dkt. 10).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing “MOTION OF DEFENDANT, THE UNITED STATES, TO STAY BRIEFING ON PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT” was sent on July 14, 2023, via e-mail and U.S. Mail, to:

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Plaintiff, *pro se*

/s/ Grant D. Johnson
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